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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RICHARD D. EMMERSON) Civil No. 08 CV 1439 W (WMc)
AND M. HELEN EMMERSON,) REDACTED COMPLAINT FOR REFUND
Plaintiffs,) AND ABATEMENT OF TAX
vs.) DEMAND FOR JURY TRIAL
UNITED STATES OF AMERICA,)
Defendant.)

COMPLAINT

Richard D. Emmerson and M. Helen Emmerson, as Plaintiffs (the "Plaintiffs"), by and through their attorneys, Richard V. Vermazen and Lauren A. Rinsky, hereby allege against United States of America as Defendant (the "Defendant"), as follows:

Nature of Complaint

1. This is a civil cause of action against the United States of America and is based upon 26 U.S.C.A. § 7422(a) which provides for actions by taxpayers for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty

1 claimed to have been collected without authority, or of any sum alleged to have been excessive
 2 or in any manner wrongfully collected.

3 **Jurisdiction**

4 2. The District Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
 5 §§ 1340, 1346(a)(1), which provides that the District Court has shall have original jurisdiction of
 6 any civil action arising under any act of Congress providing for internal revenue and for the
 7 recovery of any internal revenue tax alleged to have been collected without authority, or any sum
 8 alleged to have been excessive or in any manner wrongfully collected under the Internal Revenue
 9 laws.

10 **Venue**

11 3. Plaintiffs, Richard D. Emmerson and M. Helen Emmerson, are citizens of the United
 12 States and reside at 4612 Rancho Reposo, Del Mar, California 92014, and therefore venue is
 13 proper in the Southern District of California.

14 **Procedural Facts**

15 4. The full amount of the tax, penalties, and interest in question was paid by the Plaintiffs
 16 to the District Director of Internal Revenue at Fresno, California prior to filing a refund claim.
 17 The amounts of the penalties for the 1999 tax year plus interest paid by the Plaintiffs which are
 18 demanded to be refunded to the Plaintiffs are as follows:

<u>Penalty/Interest</u>	<u>Tax Year</u>	<u>Payment Amount</u>
26 U.S.C. §6651(a)(1)	1999	\$42,003.63
26 U.S.C. §6651(a)(2)	1999	\$14,001.21
Interest Charged	1999	\$129,609.14
Interest on Overpayment	1999	<u>\$3,445.66</u>
	TOTAL	\$189,059.64

1 Additional taxes and penalties for the 1999 tax year have been assessed were paid in full by
2 Plaintiffs; however only penalties and interest in the amount of \$189,059.64 are subject to the
3 abatement and refund demand of Plaintiffs.

4 5. Subsequent to the payments set out above in paragraph 12, no further payments,
5 refunds or credits of tax, or interest for the tax period at issue have been made.

6 6. On September 27, 2005, the Plaintiffs filed a timely IRS Form 843, Claim for Refund
7 and Request for Abatement together with documentation in support of the Plaintiffs' position,
8 attached hereto as Exhibit A and incorporated by reference, with the Internal Revenue Service
9 for the penalties and interest paid by the Plaintiffs for the 1999 tax year.

10 7. On or about August 15, 2006, the Internal Revenue Service issued a letter (IRS Form
11 LTR 854C) denying the Plaintiffs' claim for refund (see Exhibit B).

12 **Relevant Facts**

13 8. During the year at issue, the Plaintiffs employed an accountant, Bill Boettger, CPA, to
14 prepare and file their 1999 tax return.

15 9. Without extensions, the Plaintiffs 1999 tax return would have been due April 15, 2000.

16 10. It is not disputed that the Plaintiffs timely filed an extension with the Internal
17 Revenue Service to extend the due date for their 1999 tax return to August 15, 2000. Further it is
18 not disputed that the tax return was filed on or before October 16, 2000. The essence of the
19 dispute is whether the Plaintiffs filed a "second extension" to extend the due date from August
20 15, 2000 to October 16, 2000, as October 15, 2000 was a Sunday.

21 11. The Plaintiffs adamantly believe that their CPA tax preparer filed a second extension,
22 IRS Form 2688, Application for Additional Extension of Time To File U.S. Individual Income
23 Tax Return, in a timely fashion for the Plaintiffs, requesting an extension of time until October
24 15, 2000, for the Plaintiffs' to file their 1999 tax return.

25 12. Pursuant to the second extension, the Plaintiffs filed their Form 1040 for the 1999 tax
26 year on or before the extended due date of October 16, 2000.

27 13. Although the Plaintiffs have provided the Internal Revenue Service with various
28 documents and testimony to prove that the second extension request was prepared and timely

1 filed, it is the position of the Internal Revenue Service that a second extension was not timely
 2 filed because the Plaintiffs have not been able to provide the Internal Revenue Service with a
 3 copy of an approved second extension from the Internal Revenue Service.

4 14. The Plaintiffs entered into the Internal Revenue Service's Announcement 2004-46
 5 Settlement Initiative Program ("Settlement Initiative Program") for the 1999 tax year. Upon
 6 completion of the settlement, the Plaintiffs were assessed additional tax of \$628,329.00, as well
 7 as a 10% 26 U.S.C. §6662(a) penalty in the amount of \$62,833.00, a 26 U.S.C. §6651(a)(1) late
 8 filing penalty in the amount of \$42,003.63, a 26 U.S.C. §6651(a) (2) late-payment penalty in the
 9 amount of \$14,001.21.21, and interest calculated continuously from April 15, 2000 through the
 10 date of the settlement.

11 15. The Plaintiffs entered into the Settlement Initiative Program with the understanding
 12 that no penalties other than the 10% 26 U.S.C. §6662(a) penalty would be assessed. There was
 13 no mention of a late-payment penalty assessment.

14 **Improper Actions By Defendant United States of America**

15 16. The assessment of a 26 U.S.C. §6651(a)(1) late-filing penalty and a 26 U.S.C.
 16 §6651(a)(2) late-payment penalty against Richard D. Emmerson and M. Helen Emmerson for the
 17 1999 tax year was improper since a timely extension was filed with the Internal Revenue Service
 18 to extend the due date of their 1999 individual tax return from August 15, 2000 to October 16,
 19 2000, and their 1999 individual tax return was filed on or before October 16, 2000. Therefore,
 20 the Plaintiffs are entitled to abatement and refund of the \$189,059.64 penalties and interest paid
 21 for the 1999 tax year, which amount includes interest due to the Plaintiffs of \$3,445.66 on the
 22 overpayments made, calculated through September 15, 2005.

23 17. The assessment of a 26 U.S.C. §6651(a)(1) late-filing penalty and a 26 U.S.C.
 24 §6651(a)(2) late-payment penalty against Richard D. Emmerson and M. Helen Emmerson for the
 25 1999 tax year was improper even if the Court concludes based upon the evidence that a valid
 26 second extension was not filed because Richard D. Emmerson and M. Helen Emmerson
 27 exercised reasonable and prudent oversight in the hiring and employment of their tax preparer, so
 28 that a failure to file a valid second extension would be excusable under a reasonable cause

1 standard. Therefore, the Plaintiffs are entitled to abatement and refund of the \$189,059.64
2 penalties and interest paid for the 1999 tax year, which amount includes interest due to the
3 Plaintiffs of \$3,445.66 on the overpayments made, calculated through September 15, 2005.

4 18. The assessment of the 26 U.S.C. §6651(a)(1) late-filing penalty against Richard D.
5 Emmerson and M. Helen Emmerson and corresponding interest calculated continuously from
6 April 15, 2000 was improper since Richard D. Emmerson and M. Helen Emmerson timely filed
7 an extension with the Internal Revenue Service to extend the due date for their 1999 tax return
8 until August 15, 2000. Thus, even if the Court concludes based on the evidence that a second
9 extension was not filed, Richard D. Emmerson's and M. Helen Emmerson's 1999 tax return
10 would not have been "late" until after August 15, 2000. Therefore, the Plaintiffs are entitled to
11 abatement and refund of amounts paid attributable to the 26 U.S.C. §6651(a)(1) late-filing
12 penalty for the 1999 tax year.

13 19. The assessment of the 26 U.S.C. §6651(a)(2) late-payment penalty against Richard D.
14 Emmerson and M. Helen Emmerson and corresponding interest calculated continuously from
15 April 15, 2000 was improper since Richard D. Emmerson and M. Helen Emmerson timely filed
16 an extension with the Internal Revenue Service to extend the due date for their 1999 tax return
17 until August 15, 2000. Thus, even if the Court concludes based on the evidence that a second
18 extension was not filed, Richard D. Emmerson's and M. Helen Emmerson's 1999 tax return
19 would not have been "late" until after August 15, 2000. Therefore, the Plaintiffs are entitled to
20 abatement and refund of amounts paid attributable to the 26 U.S.C. §6651(a)(2) late-payment
21 penalty for the 1999 tax year.

22 20. The Plaintiffs have incurred and continue to incur attorneys' fees in this action.

23 WHEREFORE, the Plaintiff respectfully requests the following relief:

24 A. Judgment for Plaintiff and against the Defendant, United States of America, upon the
25 facts and law in the total amount of \$189,059.64, or such greater amount as may be legally
26 payable, with interest thereon as provided by law;

27 B. Reimbursement by Defendant to Plaintiff of all of their attorneys' fees and costs in this
28 action pursuant to 28 U.S.C. §2412(b) and 26 U.S.C. §7430;

1 C. Such other relief as this Court deems just and appropriate.
2

3 Dated: August 27, 2008
4

5 By: s/ Richard V. Vermazen
6 Richard V. Vermazen,
7 Attorney for Plaintiffs
8

9 By: s/ Lauren A. Rinsky
10 Lauren A. Rinsky,
11 Attorney for Plaintiffs
12

List of Exhibits

<u>Exhibit</u>	<u>Page Numbers</u>	<u>Type of Document</u>
A	8 to 62	Claim for Refund and Request for Abatement (IRS Form 843 together with documentation in support of Plaintiffs' position) for tax period ending December 31, 1999.
B	63 to 64	IRS denial of Claim for Refund (IRS Form LTR 854C, dated August 14, 2006) for tax period ending December 31, 1999.

843Form 843
(Rev. November 2002)
Department of the Treasury
Internal Revenue Service

Claim for Refund and Request for Abatement

OMB No. 1545-0024

► See separate instructions.

Use Form 843 only if your claim involves (a) one of the taxes shown on line 3a or (b) a refund or abatement of interest, penalties, or additions to tax on line 4a.

Do not use Form 843 if your claim is for—

- An overpayment of income taxes;
- A refund for nontaxable use (or sales) of fuel; or
- An overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290.

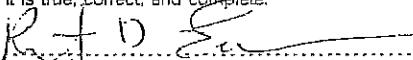
Type or print		Name of claimant RICHARD D. EMMERSON & M. HELEN EMMERSON	Your SSN or ITIN [REDACTED]
		Address (number, street, and room or suite no.) 4612 RANCHO REPOSO	Spouse's SSN or ITIN [REDACTED]
		City or town, state, and ZIP code DEL MAR, CA 92014	Employer identification number (EIN)
		Name and address shown on return if different from above SAME	Daytime telephone number (858) 945-5728
1		Period. Prepare a separate Form 843 for each tax period From 01 / 01 / 1999 to 12 / 31 / 1999	2 Amount to be refunded or abated \$ 189,059.64
3a		Type of tax, penalty, or addition to tax: <input type="checkbox"/> Employment <input type="checkbox"/> Estate <input type="checkbox"/> Gift <input type="checkbox"/> Excise (see instructions) <input checked="" type="checkbox"/> Penalty—IRC section ► 6651(a)(1) & (2)	
b		Type of return filed (see instructions): <input type="checkbox"/> 706 <input type="checkbox"/> 709 <input type="checkbox"/> 940 <input type="checkbox"/> 941 <input type="checkbox"/> 943 <input type="checkbox"/> 945 <input type="checkbox"/> 990-PF <input type="checkbox"/> 4720 <input checked="" type="checkbox"/> Other (specify) 1040	
4a		Request for abatement or refund of: <input type="checkbox"/> Interest as a result of IRS errors or delays. <input type="checkbox"/> A penalty or addition to tax as a result of erroneous advice from the IRS.	
b		Dates of payment ►	
5 Explanation and additional claims. Explain why you believe this claim should be allowed, and show computation of tax refund or abatement of interest, penalty, or addition to tax. If you need more space, attach additional sheets.			

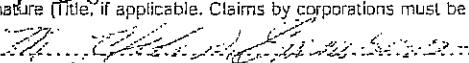
SEE ATTACHED STATEMENT FOR EXPLANATION AND CALCULATION OF AMOUNT TO BE ABATED.

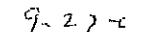
COPY

Signature. If you are filing Form 843 to request a refund or abatement relating to a joint return, both you and your spouse must sign the claim. Claims filed by corporations must be signed by a corporate officer authorized to sign, and the signature must be accompanied by the officer's title.

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete.


Signature (Title, if applicable. Claims by corporations must be signed by an officer.)


Signature


Date
Date

Richard D. & M. Helen Emmerson

[REDACTED]

FORM 843 – LINE 5

The taxpayers entered into the Internal Revenue Service's Announcement 2004-46 Settlement Initiative Program for the 1999 tax year. Upon completion of the settlement, the taxpayers were assessed additional tax of \$628,329, a 10 percent IRC Section 6662(a) penalty of \$62,833, a Section 6651(a)(1) late-filing penalty of \$42,003.63, a Section 6651(a)(2) late-payment penalty of \$14,001.21, and interest calculated continuously from April 15, 2000 through the date of the settlement.

The taxpayers agreed with the Service's assessment of the additional tax and the 10% Section 6662(a) penalty, pursuant to the Settlement Initiative program. The taxpayers, however, do not agree with the assessment of the Section 6651(a)(1) and Section 6651(a)(2) penalties. In addition, the taxpayers believe that IRC Section 6404(g) should be in effect for the calculation of interest on the assessment. Section 6404(g) would suspend the calculation of interest after 18 months from the time the return was filed.

The taxpayers' Form 1040 for the 1999 tax year was filed by the second extended due date, October 16, 2000. It is the Service's position that no Form 2688, Application for Additional Extension of Time to File U.S. Individual Income Tax Return, was timely filed by the taxpayer. We provided the Revenue Agent with various documents to prove that the second extension request was prepared and filed and that the late-filing and late-payment penalties should be abated. The Revenue Agent rejected our documentary evidence since we did not have a copy of an approved extension and proceeded with the assessment.

Attached are the various documents we provided to the Agent as evidence of the filing of the second extension. Unfortunately, an approved extension was not received from the Internal Revenue Service. It appears that the Service itself also does not have a copy of the extension. However, based on the evidence provided, it is clear that a second extension request was prepared and mailed (timely mailing is considered timely filing).

Additionally, the taxpayers entered into the Service's Settlement Initiative program with the understanding that no penalties other than the 10% Section 6662(a) penalty would be assessed. There was no mention of a late-payment penalty assessment. The assessment of a late-payment penalty is counter to the purpose of the Service's Settlement Initiative, which was to quickly and easily resolve tax disputes related to certain transactions that the Service considered abusive.

Attached is the calculation for the abatement of the late-filing and late-payment penalty and for the abatement of the additional interest that was assessed

Richard D. & M. Helen Emmerson

[REDACTED]

because the Service did not suspend the running of interest under Section 6404(g).

Based on the above and the calculation attached, the taxpayers are requesting abatement of \$189,059.64 of penalties and interest paid for the 1999 tax year. This includes interest due to the taxpayer of \$3,445.66 on the overpayments made, calculated through September 15, 2005.

Richard D. & M. Helen Emmerson

[REDACTED]

SCHEDULE OF ATTACHMENTS TO FORM 843

1. Calculation of abatement amount.
2. Copy of Form 2688 for Richard D. and M. Helen Emmerson for the 1999 tax year.
3. Letter dated November 18, 2004 to David Catalini of the Internal Revenue Service from Bill Boettger.
4. Letter dated January 27, 2005 to David Catalini and Joseph Kennedy of the Internal Revenue Service from Ernest S. Ryder.
5. Declaration of William C. Boettger.
6. Declaration of Kimberly M. Swelgin.
7. Tax Dockets prepared by Harlan & Boettger, LLP for Robert B. Clark, James L. Kelley, Robert M. Tague, and Richard & Helen Emmerson.
8. Tax Return Transmittal/Instruction Sheets prepared by Harlan & Boettger, LLP for Robert B. Clark, James L. Kelley, Robert M. Tague, and Richard & Helen Emmerson.
9. Approved Form 2688 Extensions prepared by Harlan & Boettger, LLP for Robert B. Clark, James L. Kelley, and Robert M. Tague.
10. Billing Worksheets/Timesheets from Harlan & Boettger, LLP for Robert B. Clark, James L. Kelley, Robert M. Tague, and Richard & Helen Emmerson.
11. Form 2848, Power of Attorney and Declaration of Representative.

Richard D. & M. Helen Emmerson

[REDACTED]

Form 843
 Year 1999
 Calculation of abatement amount

	Per IRS	Per 843	Difference
Additional tax	628,329.00	628,329.00	-
6662(a) penalty	62,833.00	62,833.00	-
6651(a)(1) penalty	42,003.63	-	(42,003.63)
6651(a)(2) penalty	14,001.21	-	(14,001.21)
Interest charged	264,930.85	135,321.71	(129,609.14)
Interest on overpayment	-	(3,445.66)	(3,445.66)
Total	1,012,097.69	823,038.05	(189,059.64)

See the attached schedule for the calculation of interest for the Form 843 Column.

Taxpayer name....: Emmerson 843 calculation

Taxpayer ID#....: [REDACTED]

Events	Date	Amount	Event Date Balance (1)
Additional tax	04-15-00	628,329.00	628,329.00
Sec 6662(a)	10-15-00	62,833.00	720,079.00
Sec 6404(g)	04-15-02		806,713.20
2004 Jobs Act	10-04-04		806,713.20
Payment	03-30-05	<826,596.91>	<113.20>
Payment	04-22-05	<109,815.14>	<109,928.77>
Payment	07-15-05	<75,685.64>	<187,142.73>
Interest Computation Date	09-15-05		<189,059.64>

(1) Balance includes any interest and penalties accrued as of the Event Date

Interest Detail

Event	Date	Rate	Base	Interest	Balance
Additional tax	04-15-00		628,329.00		628,329.00
Interest	06-30-00	9.00	628,329.00	11,851.48	640,180.48
Interest	09-30-00	9.00	640,180.48	14,646.01	654,826.49
Interest	12-31-00	9.00	654,826.49	14,981.08	669,807.57
Interest	03-31-01	9.00	669,807.57	15,028.51	684,836.08
Interest	06-30-01	8.00	684,836.08	13,794.80	698,630.88
Interest	09-30-01	7.00	698,630.88	12,434.71	711,065.59
Interest	12-31-01	7.00	711,065.59	12,656.03	723,721.62
Interest	03-31-02	6.00	723,721.62	10,785.82	734,507.44
Interest	04-15-02	6.00	734,507.44	1,813.20	736,320.64
Sec 6404(g)	04-15-02				
Interest	06-30-02	6.00	736,320.64		736,320.64
Interest	09-30-02	6.00	736,320.64		736,320.64
Interest	12-31-02	6.00	736,320.64		736,320.64
Interest	03-31-03	5.00	736,320.64		736,320.64
Interest	06-30-03	5.00	736,320.64		736,320.64
Interest	09-30-03	5.00	736,320.64		736,320.64
Interest	12-31-03	4.00	736,320.64		736,320.64
Interest	03-31-04	4.00	736,320.64		736,320.64
Interest	06-30-04	5.00	736,320.64		736,320.64
Interest	09-30-04	4.00	736,320.64		736,320.64
Interest	10-04-04	5.00	736,320.64		736,320.64
2004 Jobs Act	10-04-04				
Interest	12-31-04	5.00	736,320.64	8,904.75	745,225.39
Interest	03-30-05	5.00	745,225.39	9,140.61	754,366.00
Payment	03-30-05		<754,479.20>		<113.20>
Interest	03-31-05	5.00	<113.20>	<0.02>	<113.22>
Interest	04-22-05	6.00	<113.22>	<0.41>	<113.63>
Payment	04-22-05		<109,815.14>		<109,928.77>
Interest	07-15-05	6.00	<109,928.77>	<1,528.32>	<111,457.09>
Payment	07-15-05		<75,685.64>		<187,142.73>

Interest Detail

Event	Date	Rate	Base	Interest	Balance
Interest	09-15-05	6.00	<187,142.73>	<1,916.91>	<189,059.64>

Interest on Penalties

Event	Date	Rate	Base	Interest	Balance
Sec 6662 (a)	10-15-00		62,833.00		62,833.00
Interest	12-31-00	9.00	62,833.00	1,200.89	64,033.89
Interest	03-31-01	9.00	64,033.89	1,436.73	65,470.62
Interest	06-30-01	8.00	65,470.62	1,318.79	66,789.41
Interest	09-30-01	7.00	66,789.41	1,188.76	67,978.17
Interest	12-31-01	7.00	67,978.17	1,209.92	69,188.09
Interest	03-31-02	6.00	69,188.09	1,031.13	70,219.22
Interest	04-15-02	6.00	70,219.22	173.34	70,392.56
Sec 6404 (g)	04-15-02				
Interest	06-30-02	6.00	70,392.56		70,392.56
Interest	09-30-02	6.00	70,392.56		70,392.56
Interest	12-31-02	6.00	70,392.56		70,392.56
Interest	03-31-03	5.00	70,392.56		70,392.56
Interest	06-30-03	5.00	70,392.56		70,392.56
Interest	09-30-03	5.00	70,392.56		70,392.56
Interest	12-31-03	4.00	70,392.56		70,392.56
Interest	03-31-04	4.00	70,392.56		70,392.56
Interest	06-30-04	5.00	70,392.56		70,392.56
Interest	09-30-04	4.00	70,392.56		70,392.56
Interest	10-04-04	5.00	70,392.56		70,392.56
2004 Jobs Act	10-04-04				
Interest	12-31-04	5.00	70,392.56	851.30	71,243.86
Interest	03-30-05	5.00	71,243.86	873.85	72,117.71
Payment	03-30-05		<72,117.71>		0.00
Interest	03-31-05	5.00			0.00
Interest	09-15-05	6.00			0.00

Taxpayer name....: Emmerson 843 calculation

Taxpayer ID#....: [REDACTED]

----- Summary as of 09-15-05 -----

	Amount	Payments	Deposits	Balance
Tax	628,329.00	<813,942.98>	0.00	<185,613.98>
Interest	126,037.00	<126,037.00>	0.00	0.00
Refund interest	<3,445.66>	0.00	0.00	<3,445.66>
Penalty interest	9,284.71	<9,284.71>	0.00	0.00
Entered penalties	62,833.00	<62,833.00>	0.00	0.00
Totals	823,038.05	<1,012,097.69>	0.00	<189,059.64>

Prepared using: FEDERAL IRS interest rates

Table end date: 06-30-05 USER Table

2688

Department of the Treasury
Internal Revenue ServiceApplication for Additional Extension of Time To File
U.S. Individual Income Tax Return

1999

Please type or print.	Your first name and initial RICHARD D	Last name EMMERSON	Your social security number [REDACTED]
	If a joint return, spouse's first name and initial M. HELEN	Last name EMMERSON	Spouse's social security number [REDACTED]
File by the due date for filing your return.	Home address (number and street) 4612 RANCHO REPOSO		
	City, town, or post office, state, and ZIP code DEL MAR, CA 92014		

Please fill in the Return Label at the bottom of this page.

1 I request an extension of time until OCTOBER 15 2000, to file Form 1040EZ, Form 1040A, Form 1040, Form 1040NR-EZ, or Form 1040NR for the calendar year 1999, or other tax year ending _____.

2 Explain why you need an extension. You must give an adequate explanation ►

ADDITIONAL TIME IS NEEDED TO GATHER THE INFORMATION NECESSARY TO FILE A COMPLETE AND ACCURATE RETURN.

3 Have you filed Form 4868 to request an automatic extension of time to file for this tax year? Yes No
If you checked "No," we will grant your extension only for undue hardship. Fully explain the hardship in Item 2. Attach any information you have that helps explain the hardship.

If you expect to have to file a gift or generation-skipping transfer (GST) tax return, complete line 4.

4 If you or your spouse plan to file a gift or GST tax return (Form 709 or 709-A) for 1999, generally due by April 17, 2000, see the instructions and check here Yourself Spouse

Signature and Verification

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete; and, if prepared by someone other than the taxpayer, that I am authorized to prepare this form.

Signature of taxpayer ► Date ► _____

Signature of spouse ► Date ► _____
(if filing jointly, BOTH must sign even if only one had income).

Signature of preparer other than taxpayer ► Date ► _____

Please fill in the Return Label below with your name, address, and social security number. The IRS will complete the Notice to Applicant and return it to you. If you want it sent to another address or to an agent acting for you, enter the other address and add the agent's name.

(Do not detach)

Notice to Applicant To Be Completed by the IRS	<input type="checkbox"/> We HAVE approved your application.	This grace period is _____ days long. We will grant a 10-day grace period to _____.
	<input type="checkbox"/> We HAVE NOT approved your application. However, we have granted a 10-day grace period to _____. We considered a valid extension of time for elections otherwise required to be made on a timely return.	
	<input type="checkbox"/> We HAVE NOT approved your application. After considering the information you provided in item 2 above, we cannot grant your request for an extension of time to file. We are not granting a 10-day grace period.	
	<input type="checkbox"/> We cannot consider your application because it was filed after the due date of your return. <input type="checkbox"/> Other _____	

Director

Date

(Please type or print)	Taxpayer's name (and agent's name, if applicable). If a joint return, also give spouse's name. HARLAN & BOETTGER LLP RICHARD D EMMERSON & M. HELEN EMMERSON	Taxpayer's social security number [REDACTED]
	Number and street (include suite, room, or apt. no.) or P.O. box number 5415 OBERLIN DRIVE	
City, town, or post office, state, and ZIP code SAN DIEGO, CA 92121	Spouse's social security number [REDACTED]	AGENTS: Always include taxpayer's name on Return Label.

For Privacy Act and Paperwork Reduction Act Notice, see back of form.

Form 2688 (1999)

SENT VIA FAX - (781) 835-4001

November 18, 2004

To: David Catalini
Internal Revenue Agent

Re: Richard and Helen Emmerson
Tax Year: 1999

Dear David:

Got your voice message that you left yesterday and I am a little surprised. You sent us your portion of the papers relating to the Emmersons on November 1, 2004 and I thought we had till November 30, 2004 to get the signed papers back to you.

I realize that the issue that I am questioning is the assertion of the late filing penalty and I told you that we were attempting to find the Emmerson's 1999 file. The firm is in the process of moving and the 1999 file was temporarily misplaced. I also believe Dave Gibbs has relayed this same message to you.

Regardless, we have found the missing file and I am happy to report that a second extension application was filed on August 15, 2000 for the Emmersons. As a matter of fact I was the one who signed the application as per the copy of our tax docket that I am enclosing. Further, I am enclosing a copy of the instruction sheet that was sent to the client when we sent them their 1999 tax returns which shows the due date of the return to be October 16, 2000. Had no second extension been requested, the instructions would have noted to file the return as soon as possible. The file does not contain a copy of the extension request since the approved extension would have been attached to the filed return.

Our firm's policy for the preparation of tax returns, extensions, etc. was as follows:

A preparer would be assigned to prepare the item,

A reviewer would be assigned to review the item,

The completed item would be given to the partner for the final review and signature,

And the item would be sent to the client for their signature and filing.

In the case of extensions without any tax due, we (the firm) would prepare, sign and file the extension request from our office. If the extension were due within five days of when prepared, a person would be sent to the post office and deposit the envelope in the mail.

Page 2, David Catalini, IRS Agent

The firm's procedures for preparing and filing the Emmerson's second extension were followed based on the docket. The docket indicates that the extension application was prepared, reviewed and signed and sent to the IRS. I was the person who signed the extension application on August 15 and sent it directly to the IRS. The envelope with the extension would have been deposited in the mail at the main post office. (I can't say I took this envelope to the Post Office on August 15, 2000 but I did take the mail to the Post Office on many April 15, June 15, August 15, Sept. 15 and Oct 15 – so I could have taken this envelope to the Post Office.)

Hopefully this is sufficient to cover this issue. If it is not, please tell me what additional information you need in order to eliminate the assertion of this penalty.

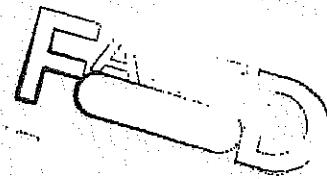
Sorry that we have not been able to talk this past week or so as my schedule for the last few weeks has been hectic. I will be out of the office tomorrow (Nov 19) morning till 8:30 or 9:00 – client meeting - and then be gone to another client meeting around 11:00 AM back in the late afternoon. If you call and I am not here, please leave a message and we will talk on Monday, Nov 22.

Thanks, Bill Boettger

LAW OFFICES
OF
ERNEST S. RYDER & ASSOCIATES, INC.
A PROFESSIONAL LAW CORPORATION

11440 WEST BERNARDO COURT, SUITE 170
SAN DIEGO, CALIFORNIA 92127

TELEPHONE (858) 674-8000
FAX (858) 674-0788



January 27, 2005

Mr. David Catalini
Mr. Joseph Kennedy
INTERNAL REVENUE SERVICE
One Montvale Avenue, Group 1745
Stoneham, MA 02180-3565

Via Facsimile (781) 835-4001 & US Mail

Re: Richard & Helen Emmerson
1999 Tax Year

Dear Mr. Catalini and Mr. Kennedy,

We are writing to demonstrate that the accounting firm of Harlan & Boettger timely filed an IRS Form 2688 for Richard and Helen Emmerson on August 15, 2000. Based upon our prior discussions, you have asked us to provide some evidence that an extension was in fact prepared, processed and timely filed.

Since a copy of the Emmerson's approved extension is not available, we asked Mr. Boettger to review his files for other clients for whom the firm filed extensions on or about August 15, 2000, so that we could demonstrate a course of conduct which should convince you that the extension was in fact prepared, processed and timely filed. In this regard, Mr. Boettger provided us with documentation for the following three clients other than the Emmersons:

1. Robert B. Clark
2. James L. Kelley
3. Robert M. Tague

Mr. David Catalini
Mr. Joseph Kennedy
Internal Revenue Service
January 27, 2005
Page 2

Enclosed herewith please find copies of approved IRS Forms 2688 for these other three clients of the accounting firm.

With these copies in hand, you know in fact that these extensions were prepared, processed and timely filed with the IRS, since the IRS approved each extension and returned them to either the firm or the taxpayer. By providing you with copies of these extensions and the other materials described below, we can demonstrate a course of conduct that should convince you that an extension was in fact prepared, processed and timely filed for the Emmersons. As you can see, each of these extensions was signed by Mr. Boettger on either August 14, 2000 or August 15, 2000.

As we understand, when the accounting firm prepares a tax form, it starts with a document referred to internally as a "Tax Docket". The Tax Docket is a document included in each client's file to track the work in progress for each tax form which is prepared and processed by the firm. Generally, each person who works on the project indicates his or her involvement, the date of that involvement and an identification of the task performed (in this case, the preparation of the IRS Form 2688, the second request for an extension of time to file the return). Each Tax Docket is dated and signed contemporaneously with the completion of the task performed.

For each of the three other clients identified above, enclosed herewith please find a copy of the relevant Tax Docket which in each case was signed contemporaneously by Mr. Boettger at the time he signed the extension, and which further indicates that the extension was sent to the IRS. In each case, you know in fact that the Tax Docket is true and correct since you have in hand a copy of the relevant approved extension to which the Tax Docket relates. Similarly, enclosed herewith is the Tax Docket for the

Mr. David Catalini
Mr. Joseph Kennedy
Internal Revenue Service
January 27, 2005
Page 3

Emmersons which is dated and signed by Mr. Boettger, and indicates that the extension was sent to the IRS on August 15, 2000.

In addition, for each of the three other clients identified above, enclosed please find a copy of the Billing Worksheet/Timesheet which indicates that an extension was prepared by a member of the firm. Again, you know in fact that the Billing Worksheet/Timesheet is true and correct since you have in hand a copy of the approved extension for each client. Similarly, enclosed herewith is a Billing Worksheet/Timesheet for the Emmersons which also indicates that the extension was prepared and processed on August 15, 2000.

Please note that the dates on each approved extension, and the relevant Tax Docket and Billing Worksheet/Timesheet all correspond and are consistent for each client as performed on either August 14, 2000 or August 15, 2000. Similarly, the dates for the Emmersons on their Tax Docket and their Billing Worksheet/Timesheet correspond and are consistent with the task being performed on August 15, 2000.

As we have discussed, based upon our actual experience, it is not unusual for an extension request which is timely filed to not be returned by the IRS with an approval, so it was not considered unusual for an approved extension to not be returned to the Emmersons.

Further, consistent with an extension being filed for each of the three other clients identified above, enclosed please find the transmittal/filing instruction sheet that went to each client with the final IRS Form 1040 return as prepared by the firm. Please note that each instruction sheet states:

"File your signed return by October 15 [or October 16] ..."

Mr. David Catalini
Mr. Joseph Kennedy
Internal Revenue Service
January 27, 2005
Page 4

This is the language that is included on the instruction sheet for each client of the firm when an extension has been filed, whether or not an approved extension is returned by the IRS. Mr. Boettger has advised us that when an extension has not been filed, the instruction sheet would state:

“File your signed return as soon as possible...”

In this regard, enclosed also please find the instruction sheet which accompanied the return for the Emmersons. You will note that the instruction sheet reads:

“File your signed return by October 16 ...”

Just like the three other client situations where you know the extensions were in fact filed since you have a copy of the approved extensions in hand, you should have the confidence that the accounting firm's course of conduct from the Tax Docket through the Billing Worksheet/Timesheet to the filing instruction sheet all show that similarly an extension was timely filed for the Emmersons.

Finally, enclosed herewith please find a declaration under penalty of perjury executed by Mr. Boettger to the effect that he did in fact sign an IRS Form 2688 and that the firm mailed the form to the IRS on August 15, 2000.

Accordingly, we believe that we have demonstrated by a preponderance of this documentary evidence, which includes concurrent and consistent, contemporaneous documentation, that the accounting firm of Harlan & Boettger prepared, processed and timely filed an IRS Form 2688 for the Emmersons. We believe by a preponderance of this documentary evidence that either the extension was not delivered by the

Mr. David Catalini
Mr. Joseph Kennedy
Internal Revenue Service
January 27, 2005
Page 5

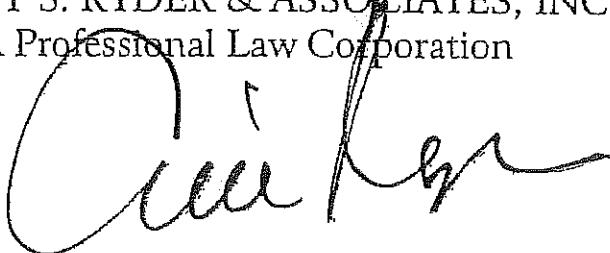
US Postal Service to the IRS, or that the IRS failed to process the extension and return it to the Emmersons. We trust you agree with this conclusion and will not impose any late filing penalty, as well as not accrue any interest beyond the Section 6404(g) time period.

In adopting the penalty provisions to the Internal Revenue Code, Congress was interested in imposing sanctions upon those who willfully disregard or neglect their filing and payment responsibilities and not those who through no fault of their own file their tax returns late. No social or national interest would be served in imposing a penalty in this situation. Accordingly, we feel that any late filing was due to reasonable cause and not to willful disregard or neglect, and that no penalty should be imposed, nor should any additional interest be accrued beyond the Section 6404(g) time period. We trust that you agree with our conclusions.

If you have any questions or comments, or need additional information, please do not hesitate to contact us.

With kindest regards,

ERNEST S. RYDER & ASSOCIATES, INC.
A Professional Law Corporation



Ernest S. Ryder

Enclosures

cc: William C. Boettger, CPA
G:\5000\5261\01\IRS Ltr.wpd

**DECLARATION UNDER PENALTY OF PERJURY
FOR
WILLIAM C. BOETTGER**

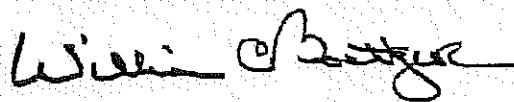
DECLARATION OF SIGNOR OF FORM 2688

To whom it may concern:

Under penalties of perjury, I, William C. Boettger, declare that on August 15, 2000 I reviewed, signed, inserted in an envelope addressed to the Internal Revenue Service, Fresno, CA 93888 and placed in the outgoing mail at the offices of Harlan & Boettger, LLP the form 2688, Application for Additional Extension of Time to File U.S. Individual Income Tax Return, for Richard and Helen Emmerson for the tax year 1999.

Further, I declare that on August 15, 2000 all mail that was addressed to the Internal Revenue Service was deposited at the Main Post Office located on Midway Drive in San Diego, CA at approximately 5:00 PM.

I declare that this statement is true, correct and complete.



William C. Boettger
January 19, 2005

DECLARATION
OF
KIMBERLY M. SWELGIN

The undersigned, KIMBERLY M. SWELGIN, hereby declares the following:

1. I was employed by the accounting firm of Harlan & Boettger from 1990 until March 2003. I started as a receptionist and in 1993 was promoted to the position of Administrative Assistant, responsible for processing tax returns; I was the only person in that position. During June 2000, I graduated from San Diego State University with a Bachelor of Arts Degree in Economics.
2. I specifically recall that at approximately 4:30 p.m. on August 15, 2000, William C. Boettger, CPA walked down the stairs of our two story office building to the mail station where I worked and exclaimed "Don't leave until I give you the Emmerson extension." I then went back to my desk in the mail station area and waited. Shortly thereafter, Mr. Boettger handed me the Emmerson extension in a sealed envelope. I immediately added a stamp to the envelope (I did not use a postage machine), and took the envelope along with an armful of other mail, including other extensions and tax returns, and drove in my Red Honda Civic to the main post office on Midway Drive in San Diego and deposited them all in the drive-thru mail box on or about 5:30 p.m.
3. I specifically recall these events because at that moment in time I was aware and consciously thinking that it would be the last extension and the last time I would have to work on a rush deadline for any tax season, since I was in the process of looking elsewhere for employment, and did not expect to continue working for Harlan & Boettger. My major was in Economics, not Accounting. Nevertheless, I did continue to work for Harlan & Boettger after my graduation and after August 15, 2000, but in

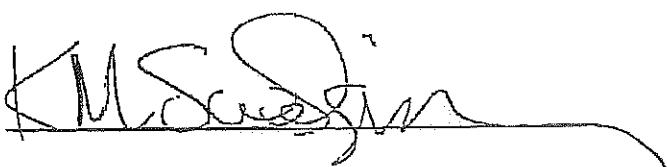
the audit department rather than the tax department. I never had to work a busy tax season again, consistent with my conscious and concurrent thoughts during August 15, 2000.

4. Before I left the offices of Harlan & Boettger to drive to the post office on August 15, 2000, I called my good friends Mikie and Kenra Meyer to let them know that I might be running late since we all planned on having dinner in order to celebrate Mikie's birthday, which was the next day August 16, 2000. After depositing the extension in the drive-thru mail box, I drove to Old Town, San Diego to have dinner at the El Fandango Restaurant. During dinner at the El Fandango Restaurant, we had specific discussions regarding my trip to the post office and the fact that it would be the last time I would have to do so for any busy tax season.

5. When Mr. Boettger mentioned the Emmerson extension, I knew personally who Mr. Emmerson was. While I was a receptionist, Mr. Emmerson would come into the office and I would recognize and greet him. I also knew who Mr. Emmerson was since Debbie Thompson, CPA, a former employee of Harlan & Boettger, went to work for Mr. Emmerson and his company. I knew Mr. Emmerson had a company known as Emmerson Enterprises, Inc. I knew Mr. Emmerson was one of the firm's most valued clients. In addition, I knew Mr. Emmerson lived in Del Mar since I delivered a document package to his house where Debbie Thompson, CPA was then working. I was very familiar with the name Emmerson.

6. I am willing to testify in Tax Court under oath to this effect, if necessary.

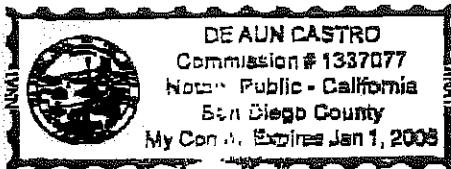
IN WITNESS HEREOF, I hereby declare under penalty and perjury that the foregoing is true and correct. Executed at San Diego, California this 21st day of May, 2005.



KIMBERLY M. SWELGIN

JURAT

State of California }
 County of San Diego } ss.



Subscribed and sworn to (or affirmed) before me

this 24th day of May, 2005, by

(1) Kimberly M. Swelgin

Name of Signer(s)

(2) De Aun Castro

Name of Signer(s)

Signature of Notary Public

OPTIONAL

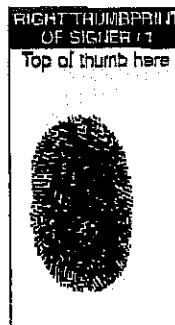
Though the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Declaration

Document Date: May 24, 2005 Number of Pages: 2

Signer(s) Other Than Named Above: N/A



TAX DOCKETS

FOR

Robert B. Clark
James L. Kelley
Robert M. Tague
Richard & Helen Emmerson

TAXPAYER: R. BRENT CLARK
Address: _____Control Log No. _____
Entity I: C P T O
Client No. _____
To sign Return _____
To sign Letter _____
Planned Delivery Date _____
2nd extension date _____Phone: Business _____ Home _____
Filing Date _____ 1st Extension date _____Form required:

By hand	Computer
Federal	_____
Federal est.	_____
California	_____
CA estimate	_____
Non-resident	_____
Extensions	_____ <input checked="" type="checkbox"/>
Gift Tax	_____
Estate Tax	_____
Letter	_____ <input checked="" type="checkbox"/>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Processing:

(Attach labels (Attach AJE's
 (Attach extensions (Attach W-2's
 (Return data to client
 (Attach federal forms to:
 California,
 (Type (Form _____ (Pg. 1 (Pg. 2
 (All _____

SPECIAL PROCESSING INSTRUCTIONS:ITEMS TO NOTE:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

BLUE PENCIL CHANGES:

(Filing Instructions (Fed (CA
 (est inst.

Federal	California
(<input type="checkbox"/> Page 1	(<input type="checkbox"/> Page 1
(<input type="checkbox"/> Page 2	(<input type="checkbox"/> Page 2

Form or Schedule No.: _____

Statement No.: _____

SUMMARY OF RESPONSIBILITY

	Responsibility	Initial Complete	Actual Date	Budget Hours	Hours	EXPLANATION OF SIGNIFICANT VARIATION FROM BUDGET:
Interview	_____	_____	_____	_____	_____	_____
Budget analysis	_____	_____	_____	_____	_____	_____
Preparation	_____	_____	_____	_____	_____	_____
Review	_____	_____	_____	_____	_____	_____
Input	_____	_____	_____	_____	_____	_____
Approval Review	_____	_____	_____	_____	_____	_____
Fast Tax check	_____	_____	_____	_____	_____	_____
Processed	_____	_____	_____	_____	_____	_____
Subsequent chgs signed delivered	_____ <u>WCF</u>	_____	_____ <u>8/15/00</u>	_____ <u>142.00</u>	_____	_____
TIME	_____	_____	_____	_____	_____	_____

FOR YEAR ENDED 1999

REPTION _____

TAXPAYER: W.M.C.
 Address: _____
 Phone: Business _____ Home _____
 Filing Date _____ 1st Extension date _____
 Planned Delivery Date _____
 2nd extension date _____

Form required:

By hand Computer

Federal _____
 Federal est. _____
 California _____
 CA estimate _____
 Non-resident _____
 Extensions _____
 Gift Tax _____
 Estate Tax _____
 Letter _____

Processing:

Attach labels Attach AJE's
 Attach extensions Attach W-2's
 Return data to client
 Attach federal forms to:
 California, _____
 Type Form _____ Pg. 1 Pg. 2
 All _____

SPECIAL PROCESSING INSTRUCTIONS:ITEMS TO NOTE:

1. _____
 2. _____
 3. _____
 4. _____
 5. _____
 6. _____
 7. _____

BLUE PENCIL CHANGES:

Filing Instructions Fed CA
 est inst.

<u>Federal</u>	<u>California</u>
<input type="checkbox"/> Page 1	<input type="checkbox"/> Page 1
<input type="checkbox"/> Page 2	<input type="checkbox"/> Page 2

Form or Schedule No.: _____

Statement No.: _____

SUMMARY OF RESPONSIBILITY

	Respon- sibility	Initial Complete	Actual Budget Date Hours	Budget Hours	EXPLANATION OF SIGNIFICANT VARIATION FROM BUDGET:
Interview					
Budget analysis					
Preparation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>1/14/00</u>		
Review					
Input					
Approval Review					
Fast Tax check		<u>1/14</u>	<u>614</u>		
Processed		<u>1/14</u>	<u>614</u>		
Subsequent chgs					
Return signed					
Mailed/delivered		<u>1/15</u>	<u>815</u>	<u>515</u>	<u>515</u>
TOTAL TIME					

FOR YEAR ENDED 1/31/00DESCRIPTION Form 1098-Ext

TAXPAYER: R&B TAGUE

Address: _____

Phone: Business _____ Home _____

Filing Date _____ 1st Extension date _____

Control Log No. _____

Entity I: C P: T O: _____

Client No. _____

To sign Return _____

To sign Letter _____

Planned Delivery Date _____

2nd extension date _____

Form required:

By hand	Computer
Federal	<input checked="" type="checkbox"/>
Federal est.	<input type="checkbox"/>
California	<input type="checkbox"/>
CA estimate	<input type="checkbox"/>
Non-resident	<input type="checkbox"/>
Extensions	<input checked="" type="checkbox"/>
Gift Tax	<input type="checkbox"/>
Estate Tax	<input type="checkbox"/>
Letter	<input type="checkbox"/>

Processing:

(Attach labels (Attach AJE's
 (Attach extensions (Attach W-2's
 (Return data to client
 (Attach federal forms to:
 California,
 (Type (Form _____ (Pg. 1 (Pg. 2
 (All _____

SPECIAL PROCESSING INSTRUCTIONS:ITEMS TO NOTE:

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4. _____
5. _____
6. _____
7. _____

BLUE PENCIL CHANGES:

(Filing Instructions (Fed (CA
 (est. inst.

Federal	California
(<input type="checkbox"/> Page 1	(<input type="checkbox"/> Page 1
(<input type="checkbox"/> Page 2	(<input type="checkbox"/> Page 2

Form or Schedule No.: _____

Statement No.: _____

SUMMARY OF RESPONSIBILITY

	Respon-	Initial	Actual	Budget	EXPLANATION OF
	sibility	Complete	Date	Hours	SIGNIFICANT
Interview					VARIATION FROM
Budget analysis					BUDGET:
Preparation					
Review					
Input					
Approval Review					
Fast Tax check					
Processed					
Subsequent chgs					
gned					
livered	<u>WOF</u>		<u>8/15/00</u>	<u>8/15/00</u>	<u>SENT TO</u> <u>IRS 8/15/00</u>
TIME					

FOR YEAR ENDED 1998

RIPTION _____

2 EXIT _____

TAX DOCKETTAXPAYER: R. ENTHORN

Address: _____

Phone: Business _____ Home _____

Filing Date _____ 1st Extension date _____

Control Log No. _____

Entity I C P T O _____

Client No. _____

To sign Return _____

To sign Letter _____

Planned Delivery Date _____

2nd extension date _____

Form required:

By hand	Computer
Federal	_____
Federal est.	_____
California	_____
CA estimate	_____
Non-resident	_____
Extensions	<u>X</u>
Gift Tax	_____
Estate Tax	_____
Letter	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Processing:

() Attach labels () Attach AJE's
 () Attach extensions () Attach W-2's
 () Return data to client
 () Attach federal forms to:
 California, _____
 () Type () Form _____ () Pg. 1 () Pg. 2
 () All _____

SPECIAL PROCESSING INSTRUCTIONS:ITEMS TO NOTE:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

BLUE PENCIL CHANGES:

() Filing Instructions () Fed () CA
 () est inst.

Federal	_____	California	_____
() Page 1	_____	() Page 1	_____
() Page 2	_____	() Page 2	_____

Form or Schedule No.: _____

Statement No.: _____

SUMMARY OF RESPONSIBILITYEXPLANATION OF
SIGNIFICANT
VARIATION FROM
BUDGET:

Responsibility	Initial Complete	Actual Date	Budget Hours	Hours	Explanation
Interview	_____	_____	_____	_____	_____
Budget analysis	_____	_____	_____	_____	_____
Preparation	_____	_____	_____	_____	_____
Review	<u>1/2</u>	_____	_____	_____	_____
Input	_____	_____	_____	_____	_____
Approval Review	_____	_____	_____	_____	_____
Fast Tax check	_____	_____	_____	_____	_____
Processed	_____	_____	_____	_____	_____
Subsequent chgs	_____	_____	_____	_____	_____
Return signed	<u>1/2</u>	_____	_____	_____	_____
Mailed/Delivered	_____	_____	_____	_____	_____
TOTAL TIME					
<i>8 1/2 hours</i>					
<i>8 1/2 hours</i>					

FOR YEAR ENDED 1999

DESCRIPTION

Second Extension

TRANSMITTAL/INSTRUCTION SHEETS

FOR

Robert B. Clark
James L. Kelley
Robert M. Tague
Richard & Helen Emmerson

HARLAN & BOETTGER, LLP
CERTIFIED PUBLIC ACCOUNTANTS
5415 OBERLIN DRIVE
SAN DIEGO, CA 92121

ROBERT B. & CAROL M. CLARK
Instructions For Filing Form
1040

U.S. Individual Income Tax Return for 1999

Signature..

The original return should be signed (use full name) and dated on page 2 by the taxpayer and spouse.

Overpayment..

Your return shows a \$17,942. overpayment. Of this amount, \$7,442. will be refunded to you and \$10,500. has been applied to your 2000 estimated tax.

Filing..

File your signed return by October 16, 2000 with:

Internal Revenue Service Center
Fresno, CA 93888-0102

HARLAN & BOETTGER, LLP
CERTIFIED PUBLIC ACCOUNTANTS
5415 OBERLIN DRIVE
SAN DIEGO, CA 92121

JAMES L. KELLEY & ELIZABETH A. KELLEY

Instructions For Filing Form

1040

U.S. Individual Income Tax Return for 1999

Signature..

The original return should be signed (use full name) and dated on page 2 by the taxpayer and spouse.

Payment of Tax..

A check or money order payable to the "United States Treasury" in the amount of \$12,395. should be enclosed with the return and the 1040-V payment voucher. Your social security number and "1999 Form 1040" should be written on your check or money order.

The amount payable to the IRS includes:

Tax	\$ 11,498.
Penalty on underpayment of estimated tax	\$ 26.
Penalty for failure to pay 90% of the balance due	\$ 345.
Interest	\$ 526.
<hr/>	
Total amount due to the IRS	\$ 12,395.
<hr/>	

Filing..

File your signed return by October 16, 2000 with:

Internal Revenue Service Center
P.O. Box 60000
Los Angeles, CA 90060-6000

HARLAN & BOETTGER, LLP
CERTIFIED PUBLIC ACCOUNTANTS
5415 OBERLIN DRIVE
SAN DIEGO, CA 92121

ROBERT N. TAGUE
Instructions For Filing Form
1040

U.S. Individual Income Tax Return for 1999

Signature..

The original return should be signed (use full name) and dated on page 2 by the taxpayer.

Payment of Tax..

A check or money order payable to the "United States Treasury" in the amount of \$20,178. should be enclosed with the return and the 1040-V payment voucher. Your social security number and "1999 Form 1040" should be written on your check or money order.

The amount payable to the IRS includes:

Tax	\$ 17,993.
Penalty on underpayment of estimated tax	\$ 827.
Penalty for failure to pay 90% of the balance due	\$ 540.
Interest	\$ 818.
<hr/>	
Total amount due to the IRS	\$ 20,178.
<hr/>	

Filing..

File your signed return by October 15, 2000 with:

Internal Revenue Service Center
P.O. Box 60000
Los Angeles, CA 90060-6000

HARLAN & BOETTGER, LLP
CERTIFIED PUBLIC ACCOUNTANTS
5415 OBERLIN DRIVE
SAN DIEGO, CA 92121

RICHARD D. & M. HELEN EMMERSON
Instructions For Filing Form
1040

U.S. Individual Income Tax Return for 1999

Signature..

The original return should be signed (use full name) and dated on page 2 by the taxpayer and spouse.

Overpayment..

Your return shows a \$157,846. overpayment. Of this amount, \$157,846. will be refunded to you and NONE has been applied to your 2000 estimated tax.

Filing..

File your signed return by October 16, 2000 with:

Internal Revenue Service Center
Fresno, CA 93888-0102

APPROVED EXTENSIONS

FOR

Robert B. Clark
James L. Kelley
Robert M. Tague



2688

Department of the Treasury
Internal Revenue ServiceApplication for Additional Extension of Time To File
U.S. Individual Income Tax Return

OMB No. 1545-0066

1999

► See instructions on back.

► You MUST complete all items that apply to you.

Please type or print.	Your first name and initial ROBERT B	Last name CLARK	Your social security number [REDACTED]
	If a joint return, spouse's first name and initial CAROL M	Last name CLARK	Spouse's social security number [REDACTED]
File by the due date for filing your return.	Home address (number and street) P.O. BOX 2332		
	City, town, or post office, state, and ZIP code RANCHO SANTA FE, CA 92067		

Please fill in the Return Label at the bottom of this page.

- 1 I request an extension of time until OCTOBER 16 2000, to file Form 1040EZ, Form 1040A, Form 1040, Form 1040NR-EZ, or Form 1040NR for the calendar year 1999, or other tax year ending _____.
- 2 Explain why you need an extension. You must give an adequate explanation ► **ADDITIONAL TIME IS NEEDED TO GATHER THE INFORMATION NECESSARY TO FILE A COMPLETE AND ACCURATE RETURN.**

- 3 Have you filed Form 4868 to request an automatic extension of time to file for this tax year? Yes No
If you checked "No," we will grant your extension only for undue hardship. Fully explain the hardship in item 2. Attach any information you have that helps explain the hardship.

If you expect to have to file a gift or generation-skipping transfer (GST) tax return, complete line 4.

- 4 If you or your spouse plan to file a gift or GST tax return (Form 709 or 709-A) for 1999, generally } Yourself . . . ►
due by April 17, 2000, see the instructions and check here } Spouse . . . ►

Signature and Verification

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete; and, if prepared by someone other than the taxpayer, that I am authorized to prepare this form.

Signature of taxpayer ► _____ Date ► _____

Signature of spouse ► _____ Date ► _____
(if filing jointly, BOTH must sign even if only one had income)Signature of preparer other than taxpayer ► Robert B. Boettger Date ► 3/14/00

Please fill in the Return Label below with your name, address, and social security number. The IRS will complete the Notice to Applicant and return it to you. If you want it sent to another address or to an agent acting for you, enter the other address and add the agent's name.

Notice to Applicant To Be Completed by the IRS	<input type="checkbox"/> We HAVE approved your application.	(Do not detach)	
	<input type="checkbox"/> We HAVE NOT approved your application. However, we have granted a 10-day grace period to _____.	This grace period is considered a valid extension of time for elections otherwise required to be made on a timely return.	
	<input type="checkbox"/> We HAVE NOT approved your application. After considering the information you provided in Item 2 above, we cannot grant your request for an extension of time to file. We are not granting a 10-day grace period.	[REDACTED]	
	<input type="checkbox"/> We cannot consider your application because it was filed after the due date of your return.	[REDACTED]	
	<input type="checkbox"/> Other _____	[REDACTED]	
Director.		Date _____	

Return Label (Please type or print)	Taxpayer's name (and agent's name, if applicable). If a joint return, also give spouse's name. HARLAN & BOETTGER LLP ROBERT B & CAROL M CLARK	Taxpayer's social security number [REDACTED]	
	Number and street (include suite, room, or apt. no.) or P.O. box number 5415 OBERLIN DRIVE	Spouse's social security number [REDACTED]	
	City, town, or post office, state, and ZIP code SAN DIEGO, CA 92121	AGENTS: Always include taxpayer's name on Return Label.	

For Privacy Act and Paperwork Reduction Act Notice, see back of form.

Form 2688 (1999)

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2688

Department of the Treasury
Internal Revenue ServiceApplication for Additional Extension of Time To File
U.S. Individual Income Tax Return

OMB No. 1545-0066

1999

See instructions on back.

► You MUST complete all items that apply to you.

Please type or print	Your first name and initial JAMES L	Last name KELLEY	Your social security number [REDACTED]
	If a joint return, spouse's first name and initial ELIZABETH A	Last name KELLEY	Spouse's social security number [REDACTED]
File by the due date for filing your return.	Home address (number and street) 3111 KELLOGG STREET		
	City, town, or post office, state, and ZIP code SAN DIEGO, CA 92106		

Please fill in the Return Label at the bottom of this page.

1 I request an extension of time until OCTOBER 16 2000, to file Form 1040EZ, Form 1040A, Form 1040, Form 1040NR-EZ, or Form 1040NR for the calendar year 1999, or other tax year ending _____.

2 Explain why you need an extension. You must give an adequate explanation ► ADDITIONAL TIME IS NEEDED TO GATHER THE INFORMATION NECESSARY TO FILE A COMPLETE AND ACCURATE RETURN.

3 Have you filed Form 4868 to request an automatic extension of time to file for this tax year? Yes No
If you checked "No," we will grant your extension only for undue hardship. Fully explain the hardship in item 2. Attach any information you have that helps explain the hardship.

If you expect to have to file a gift or generation-skipping transfer (GST) tax return, complete line 4.

4 If you or your spouse plan to file a gift or GST tax return (Form 709 or 709-A) for 1999, generally } Yourself ►
due by April 17, 2000, see the instructions and check here } Spouse ►

Signature and Verification

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete; and, if prepared by someone other than the taxpayer, that I am authorized to prepare this form.

Signature of taxpayer ► _____ Date ► _____

Signature of spouse ► _____ Date ► _____
(if filing jointly, BOTH must sign even if only one had income)

Signature of preparer other than taxpayer ► Harlan L. Kelley Date ► 8/15/00

Please fill in the Return Label below with your name, address, and social security number. The IRS will complete the Notice to Applicant and return it to you. If you want it sent to another address or to an agent acting for you, enter the other address and add the agent's name.

We HAVE approved your application.
 We HAVE NOT approved your application.

Notice to Applicant
To Be Completed by the IRS
However, we have granted a 10-day grace period to _____

We HAVE NOT approved your application. After considering the information you provided in item 2, we cannot grant your request for an extension of time to file. We are not granting a 10-day grace period.

We cannot consider your application because it was filed after the due date of your return.
Other _____

(Do not detach)
EXTENSION TO FILE APPROVED

This grace period is

10 DAYS
FROM SUBMISSION TO
PROCESSING CENTER

Director

Date

Return Label (Please type or print)	Taxpayer's name (and agent's name, if applicable). If a joint return, also give spouse's name. HARLAN & BOETTGER LLP JAMES L KELLEY & ELIZABETH A KELLEY	Taxpayer's social security number [REDACTED]
	Number and street (include suite, room, or apt. no.) or P.O. box number 5415 OBERLIN DRIVE	Spouse's social security number [REDACTED]
	City, town, or post office, state, and ZIP code SAN DIEGO, CA 92121	AGENTS: Always include taxpayer's name on Return Label.

For Privacy Act and Paperwork Reduction Act Notice, see back of form.

Form 2688 (1999)

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Form 2688Department of the Treasury
Internal Revenue ServiceApplication for Additional Extension of Time To File
U.S. Individual Income Tax Return

OMB No. 1545-0066

1999

► See instructions on back.

► You MUST complete all items that apply to you.

Please type or print.	Your first name and initial ROBERT N	Last name TAGUE	Your social security number [REDACTED]
	If a joint return, spouse's first name and initial [REDACTED]	Last name [REDACTED]	Spouse's social security number [REDACTED]
File by the due date for filing your return.	Home address (number and street) [REDACTED]		[REDACTED]
	City, town, or post office, state, and ZIP code [REDACTED]		[REDACTED]

Please fill in the Return Label at the bottom of this page.

1 I request an extension of time until OCTOBER 16 2000, to file Form 1040EZ, Form 1040A, Form 1040, Form 1040NR-EZ, or Form 1040NR for the calendar year 1999, or other tax year ending _____.

2 Explain why you need an extension. You must give an adequate explanation ► ADDITIONAL TIME IS NEEDED TO GATHER THE INFORMATION NECESSARY TO FILE A COMPLETE AND ACCURATE RETURN.

3 Have you filed Form 4868 to request an automatic extension of time to file for this tax year? Yes No
If you checked "No," we will grant your extension only for undue hardship. Fully explain the hardship in item 2. Attach any information you have that helps explain the hardship.

If you expect to have to file a gift or generation-skipping transfer (GST) tax return, complete line 4.

4 If you or your spouse plan to file a gift or GST tax return (Form 709 or 709-A) for 1999, generally } Yourself. . . . ►
due by April 17, 2000, see the instructions and check here } Spouse ►

Signature and Verification

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete; and, if prepared by someone other than the taxpayer, that I am authorized to prepare this form.

Signature of taxpayer ► _____ Date ► _____

Signature of spouse ► _____ Date ► _____
(if filing jointly, BOTH must sign even if only one had income)

Signature of preparer
other than taxpayer ► C. Sillie Boettger CFA Date ► 8/15/00

Please fill in the Return Label below with your name, address, and social security number. The IRS will complete the Notice to Applicant and return it to you. If you want it sent to another address or to an agent acting for you, enter the other address and add the agent's name.

Notice to Applicant To Be Completed by the IRS	<input checked="" type="checkbox"/> We HAVE approved your application. <input type="checkbox"/> We HAVE NOT approved your application. However, we have granted a 10-day grace period to _____ This grace period is considered a valid extension of time for elections otherwise required to be made on a timely return.		(Do not detach)	
	<input type="checkbox"/> We HAVE NOT approved your application. After considering the information you provided above, we cannot grant your request for an extension of time to file. We are not granting a 10-day grace period.			EXENSION TO FILE APPROVED
	<input type="checkbox"/> We cannot consider your application because it was filed after the due date of your return.			
	<input type="checkbox"/> Other _____			
	Director _____ Date _____			

Return Label (Please type or print)	Taxpayer's name (and agent's name, if applicable). If a joint return, also give spouse's name. HARLAN & BOETTGER LLP ROBERT N TAGUE	Taxpayer's social security number [REDACTED]
	Number and street (include suite, room, or apt. no.) or P.O. box number 5415 OBERLIN DRIVE	Spouse's social security number [REDACTED]
	City, town, or post office, state, and ZIP code SAN DIEGO, CA 92121	AGENTS: Always include taxpayer's name on Return Label.

For Privacy Act and Paperwork Reduction Act Notice, see back of form.

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BILLING WORKSHEET/TIMESHEETS

FOR

Robert B. Clark
James L. Kelley
Robert M. Tague
Richard & Helen Emmerson

Billing WorkSheet By Bill Manager

Boettger, Bill (2)

For the Period: 1/1/1990 - 8/15/2000

Phone FYE WIP Progress Net WIP A/R Balance

019901
Robert & Carol Clark (0)

702 898-9748

Work In Progress - Robert & Carol (0) -

Tax Ind

223 Extensions

Dec 92.50 0.00 0.00 92.50 0.00

Cost

Hours

Amount

C/E

Memo

Boettger

8/15/2000

Ind Totals:

0.00

0.50

92.50

Tax Totals:

0.00

0.50

92.50

Totals:

0.00

0.50

92.50

019901 Totals:

0.00

0.50

92.50

Service Code Summary

BY SERVICE CODE

Cur Yr History	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Production	0.00	0.00	135.00	0.00	0.00	0.00	0.00	92.50	0.00	0.00	0.00	0.00	227.50
Billing	0.00	0.00	65.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	65.00
Payments	-600.00	0.00	-500.00	0.00	-65.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	-1165.00

NO A/R AGING as of 8/15/2000

WIP AGING as of 8/15/2000

Robert & Carol Clark (0)

Current	31-60	61-90	91-120	Over 120	Balance
92.50	0.00	0.00	0.00	0.00	92.50

Form 2848

(Rev. March 2004)
Department of the Treasury
Internal Revenue ServicePower of Attorney
and Declaration of Representative

► Type or print. ► See the separate instructions.

OMB No. 1545-0150

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date / /

Part I Power of Attorney

Caution: Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer Information. Taxpayer(s) must sign and date this form on page 2, line 9.		Social security number(s) [REDACTED]	Employer identification number
Taxpayer name(s) and address RICHARD D. EMMERSON M. HELEN EMMERSON 4612 RANCHO REPOSO DEL MAR, CA 92014-4201		[REDACTED]	Daytime telephone number ()
			Plan number (if applicable)

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address DAVID M. GIBBS 4150 RUFFIN ROAD, SUITE 235 SAN DIEGO, CA 92123	CAF No. 0200-73109R SSN Telephone No. 858-535-2000 Fax No. 858-571-2700 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address ARTHUR PEARSON 88 KEARNEY STREET, 10TH FLOOR SAN FRANCISCO, CA 94108	CAF No. 9000-2000047 SSN Telephone No. 415-788-1900 Fax No. 415-393-8087 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address	CAF No. SSN Telephone No. Fax No. Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax matters

Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (see the instructions for line 3)	Tax Form Number (1040, 841, 720, etc.)	Year(s) or Period(s) (see the instructions for line 3)
INCOME	1040	1999, 2000, 2001
THE ACTS AUTHORIZED BY THIS POWER OF ATTORNEY INCLUDE REPRESENTATION FOR THE PURPOSES OF SUBCHAPTER C OF CHAPTER 63 OF THE INTERNAL REVENUE CODE.		

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific uses not recorded on CAF. ►

5 Acts authorized. The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative, the power to sign certain returns, or the power to execute a request for disclosure of tax returns or return information to a third party. See the line 5 instructions for more information. Exceptions. An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. See Unenrolled Return Preparer on page 2 of the instructions. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Circular 230. See the line 5 instructions for restrictions on tax matters partners.

List any specific additions or deletions to the acts otherwise authorized in this power of attorney:
.....
.....
.....

6 Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, BUT NOT TO ENDORSE OR CASH, refund checks, initial here _____ and list the name of that representative below.

Name of representative to receive refund check(s) ►

For Privacy Act and Paperwork Reduction Notice, see page 4 of the instructions.

Cat. No. 11980J

Form 2848 (Rev. 3-2004)

Form 2848 (Rev. 5-2004)

7 Notices and communications. Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2.

a If you also want the second representative listed to receive a copy of notices and communications, check this box

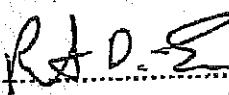
b If you do not want any notices or communications sent to your representative(s), check this box

8 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here

YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

9 Signature of taxpayer(s). If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the Instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

► IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.



Signature

9-27-05

Date

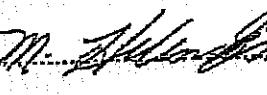
Title (if applicable)

RICHARD D. EMMERSON

Print Name

PIN Number

Print name of taxpayer from line 1 if other than individual



Signature

9-27-05

Date

Title (if applicable)

M. HELEN EMMERSON

Print Name

PIN Number

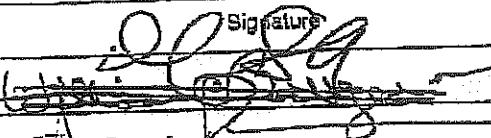
Part II Declaration of Representative

Caution: Students with a special order to represent taxpayers in Qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program, see the instructions for Part II.

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent under the requirements of Treasury Department Circular No. 230.
 - d Officer—a bona fide officer of the taxpayer's organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d) of Treasury Department Circular No. 230).
 - h Unenrolled Return Preparer—the authority to practice before the Internal Revenue Service is limited by Treasury Department Circular No. 230, section 10.7(c)(1)(vii). You must have prepared the return in question and the return must be under examination by the IRS. See Unenrolled Return Preparer on page 2 of the instructions.

► IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED. See the Part II instructions.

Designation—Insert above letter (a-h)	Jurisdiction (state) or Identification	Signature	Date
B	CA		9/27/05
A	CA		9/27/05

10/09/2008 15:10 78183F 701

SBSE STONEHAM

PAGE 02

Form 2848

(Rev. January 2002)

Department of the Treasury
Internal Revenue ServiceCOMPLETED
MANAG CAF DEPT

OMB No. 1545-0150

For IRS Use Only

Received by:

Name: D. CATALYST

Telephone: (72) 232-4088

Function: ESAT

Date: 10/19/03

Power of Attorney
and Declaration of Representative OCT 10 2003

► See the separate instructions.

Part I: Power of Attorney (Type or print.)

1 Taxpayer information. Taxpayer(s) must sign and date this form on page 2, line 9.

Taxpayer name(s) and address Richard D. & M. Helen Emmerson 4612 Rancho Reposa Del Mar, CA 92014-4201	Social security number(s) [REDACTED] [REDACTED]	Employer identification number
	Daytime telephone number ()	Plan number (if applicable)

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address WILLIAM C. BOETTGER 5415 O BERGEN DR. SAN DIEGO, CA 92121	CAF No. 9000-43150 Telephone No. 858-535-2000 Fax No. 858-535-2015 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/>
Name and address ERNEST S. RYDER 101 WEST BROADWAY, SUITE 1460 SAN DIEGO, CALIFORNIA 92101	CAF No. 615-233-7000 Telephone No. 615-233-1214 Fax No. 615-233-1214 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/>
Name and address	CAF No. Telephone No. Fax No. Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/>

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax matters

Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (See the instructions for line 3.)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s)
INCOME TAXES	1040	December 31, 1999
"The acts authorized by this power of attorney include representation for the purposes of Subchapter C of Chapter 63 of the Internal Revenue Code."	1040, 1065, 1120S	December 31, 1999

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific uses not recorded on CAF.

5 Acts authorized. The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative, the authority to execute a request for a tax return, or a consent to disclose tax information unless specifically added below, or the power to sign certain returns. See the instructions for Line 5. Acts authorized.

List any specific additions or deletions to the acts otherwise authorized in this power of attorney:

Note: In general, an unenrolled preparer of tax returns cannot sign any document for a taxpayer. See Revenue Procedure 81-38, printed as Pub. 470, for more information.

Note: The tax matters partner of a partnership is not permitted to authorize representatives to perform certain acts. See the separate instructions for more information.

6 Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, BUT NOT TO ENDORSE OR CASH, refund checks, initial here _____ and list the name of that representative below.

Name of representative to receive refund check(s) ►

For Paperwork Reduction and Privacy Act Notice, see the separate instructions.

Cat. No. 11980J

Form 2848 (Rev. 1-2002)

10/03/2003 15:12 7818354001

SBSE STONEHAM

PAGE 03

Form 2848 (Rev. 1-2002)

Page 2

7. **Notices and communications.** Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2 unless you check one or more of the boxes below.

a. If you want the first representative listed on line 2 to receive the original, and yourself a copy, of such notices or communications, check this box

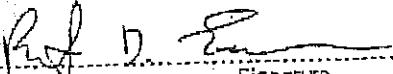
b. If you also want the second representative listed to receive a copy of such notices and communications, check this box

c. If you do not want any notices or communications sent to your representative(s), check this box

8. **Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here

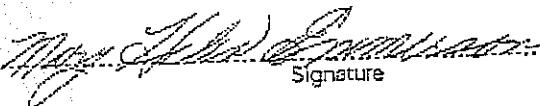
YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

► IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.


Signature

10-1-03
Date

Richard Fennell
Print Name


Signature

10-1-03
Date

M. HELEN FENNELL
Print Name

Part II Declaration of Representative

Caution: Students with a special order to represent taxpayers in Qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program, see the separate instructions for Part II.

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
 - a. Attorney—a member in good standing of the highest court of the jurisdiction shown below.
 - b. Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c. Enrolled Agent—enrolled as an agent under the requirements of Treasury Department Circular No. 230.
 - d. Officer—a bona fide officer of the taxpayer's organization.
 - e. Full-Time Employee—a full-time employee of the taxpayer.
 - f. Family Member—a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
 - g. Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d)(1) of Treasury Department Circular No. 230).
 - h. Unenrolled Return Preparer—an unenrolled return preparer under section 10.7(c)(1)(viii) of Treasury Department Circular No. 230.

► IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED.

Designation—insert above letter (a-h)	Jurisdiction (state) or Enrollment Card No.	Signature	Date
b	CFA-CA	Wiley Chesser	9/30/03
a	CAIF	Dee Key	9-30-2003

Form 2848 (Rev. 1-2002)

IRS Department of the Treasury
Internal Revenue Service
PO BOX 236
MEMPHIS TN 38101-0236

W 71073514697480566173

In reply refer to: 0342120946
Aug. 14, 2006 LTR 105C E1
[REDACTED] 199912 30 000 1
00074
BODC: SB

RICHARD D & M HELEN EMMERSON
% DAVID M GIBBS
5415 OBERLIN DR
SAN DIEGO CA 92121-1716

CERTIFIED MAIL

Taxpayer Identification Number: [REDACTED]
Kind of Tax: 1040
Date of Claim(s) Received: Mar. 16, 2006
Tax Period : Dec. 31, 1999

WE COULDN'T ALLOW YOUR CLAIM

Dear Richard & Helen Emmerson:

WHY WE'RE SENDING YOU THIS LETTER

This letter is your notice that we've disallowed your claim for credit for the period shown above.

WHY WE CANNOT ALLOW YOUR CLAIM

We have enclosed Form 886-A, Explanations of Items, to explain the reason for disallowance of claim.

IF YOU DISAGREE

You have the right to appeal our decision to disallow your claim. You may represent yourself before Appeals. You may have an attorney, certified public accountant, or person enrolled to practice before the Internal Revenue Service represent you. To have someone represent you, attach Form 2848, Power of Attorney and Declaration of Representative, (or similar written power of attorney) to your written statement.

You may request a small dollar case appeal for a disallowed claim that is less than \$25,000 or prepare a formal protest for a disallowed claim over \$25,000.

To request a small dollar case appeal for a claim, do the following:

1. State that you want to appeal.
2. List the disallowed items you disagree with and why you don't agree with each item.
3. Provide your name, address, taxpayer identification number, daytime telephone number, and a copy of this letter.
4. Mail your appeal request to the address shown on this letter.

0342120946
Aug. 14, 2006 LTR 105C E1
[REDACTED] 199912 30 000 1
00076

RICHARD D & M HELEN EMMERSON
% DAVID M GIBBS
5415 OBERLIN DR
SAN DIEGO CA 92121-1716

Court having jurisdiction or with the United States Claims Court. These courts are part of the judiciary branch of the federal government and have no connection with the Internal Revenue Service.

The law permits you to do this within 2 years from the date of this letter. If you decide to appeal our decision first, the 2-year period still begins from the date of this letter. However, if you signed an agreement that waived your right to the notice of disallowance (Form 2297), the period for filing suit begins on the date you filed the waiver.

You may request an appeal, a hearing, or a meeting to disagree with any examination action. However, we will not allow an appeal in cases of failure or refusal to comply with tax laws because of moral, religious, political, constitutional, conscientious, or similar grounds.

HOW TO CONTACT US

If you have any questions, please call us toll free at 1-800-829-8374.

If you prefer, you may write to us at the address shown at the top of the first page of this letter.

Whenever you write, please include this letter and, in the spaces below, give us your telephone number with the hours we can reach you. Also, you may want to keep a copy of this letter for your records.

Telephone Number () _____ Hours _____

1 Civil No. 08-CV-1439 W (WMc)

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8 **CERTIFICATE OF SERVICE**

9 I certify that a copy of the foregoing Redacted Complaint for Refund and Abatement of
10 Tax was this date served upon the United States Attorney's Office Southern District of California
11 Civil Division electronically through the United States District Court for the Southern District of
12 California CM/ECF system. I also certify that a copy of the foregoing Redacted Complaint for
13 Refund and Abatement of Tax was this date sent by United States Mail, postage prepaid,
14 certified return receipt requested, to the Attorney General of the United States in Washington,
15 D.C., the Internal Revenue Service in Washington, D.C. and the Internal Revenue Service in
16 Laguna Niguel, California, at the following addresses:

17

18 U.S. Department of Justice
19 Attorney General's Office
Attn: Tax Division
20 950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Department of the Treasury
Internal Revenue Service
Attn: Office of General Counsel
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

21

22 Department of the Treasury
Internal Revenue Service
23 24000 Avila Road
Laguna Niguel, CA 92677

25 San Diego, CA this 27th day of August, 2008.

26 s/ Lauren A. Rinsky
27 Lauren A. Rinsky,
28 Attorney for Plaintiffs